



**SPECIAL MEETING OF THE COMMON COUNCIL
MIDDLETOWN, CONNECTICUT
OCTOBER 18, 2011**

Special Meeting	A special meeting of the Common Council of the City of Middletown was held in the Council Chamber of the Municipal Building, on Tuesday, October 18, 2011 at 6:30 p.m.
Present	Deputy Mayor Joseph E. Bibisi, Council Members Thomas J. Serra, Ronald P. Klattenberg, Philip J. Pessina, Gerald E. Daley, Robert P. Santangelo, Hope P. Kasper, James B. Streeto, Grady L. Faulkner, Jr., Deborah A. Kleckowski, David Bauer, and Daniel Drew; Corporation Counsel William Howard; Sergeant-at-Arms Officer Michael Thompson, and Council Clerk Marie O. Norwood.
Absent	Mayor Sebastian N. Giuliano.
Also Present	Four members of the public
Meeting Called to Order	The Deputy Mayor calls the meeting to order at 6:30 p.m. and asks Councilman Drew to lead the public in the Pledge of Allegiance.
Call of Meeting Read	The Call of Meeting was read and accepted. Deputy Mayor Bibisi declares the Call a Legal Call and the Meeting a Legal Meeting.
Public Hearing Opens	The Acting Chair opens the public hearing on the agenda item at 6:32 p.m. He asks if anyone wishes to address the agenda item.
Public Hearing Closes	The Acting Chair, seeing no one coming forward to address the agenda item, closes the public hearing at 6:32 p.m.
<u>Agenda Item</u>	<u>4-1</u>

The Acting Chair recognizes Councilman Serra who reads the resolution in its entirety and moves it for approval; his motion is seconded by Councilman Streeto. The Acting Chair calls for the vote. Council Members Klattenberg and Bauer ask to address the issue before a vote is called.

Councilman Klattenberg uses this as an opportunity to discuss the work of the subcommittee and Councilwoman Kasper and Councilman Bauer will have an opportunity to report on the subcommittee as well. The subcommittee came up with a proposal and consultant and it relates to the request and the reason everyone should support the request to override the veto. He hands out a copy of the resume of Douglas Rae provided to the subcommittee by Mr. Rae; he was asked to meet with the subcommittee which has met on two separate occasions and his resume fits perfectly with the goals of the subcommittee and the Council. He highlights aspects of the resume. His area of expertise is municipal organization and there is a long list of accomplishments which was paired down for us. He is suited for the investigation. He hands out the final contract language the subcommittee has come up with to move the project forward and if it gets approved, the Council Clerk states it can be published on October 20 and the contract signed on November 4.

Councilman Bibisi, as Acting Chair, states before we get the subcommittee to speak, he states he takes the position that this is a Charter violation; the resolution, to wit, the Council investigation, in the Charter, the provision states the Council shall investigate and the appropriation request enables outside consultants to conduct an investigation. We are conducting an investigation on moving departments and if it is in violation of the Charter could the Finance Director release the funds if he is given guidance that he could not release the funds. Corporation Council Howard states that is difficult to answer off the top of my head; I suppose if given those instructions and he had something to sort out, I don't think conclusively he could say that. He states he would consult with the City Attorney. Councilman Klattenberg states I still have the floor and if you look at the contract language, it is not a violation of the charter; what the Council and subcommittee is proposing is Professor Rae assisting the Council in their investigation. It is not being handed over and he will come up with a report to assist the Council and in turn as a subcommittee we will inform the Council so they are directly involved with the investigation. It is not solely being handed over to a consultant.

The Acting Chair recognizes Councilman Bauer who defers to Councilwoman Kasper. She states we have the authority in the Charter and the procedure to go ahead the process is silent and we thought it is important to keep the Council involved and the consultant will be assisting us. This person was interviewed by our committee and has excellent investigative skills and I will support this.

Councilman Bauer states my report to follow up with what Councilman Klattenberg asked about, my report of the subcommittee is that we have come quite a ways deciding how this investigation will take place and wants to tell the Council he is mindful of exactly of the language of the Charter, Chapter III, Section 8 and since the last meeting he has done his homework and suggests where the Council is and where it can go on this. I do believe on some level that we all agree that there should be an investigation taking place and should adhere to the authority of the Council and would like to engage the Corporation Counsel in the second paragraph when 78-10 talks about a waiver, I read the ordinance and I think the important word to me is where it says the Council can authorize an exception to that rule. What I would ask the Corporation Counsel, does that imply that someone else in the executive branch and Contract committee initiate or can the Council initiate and authorize a suggestion by the Personnel Services Committee. Corporation Counsel Howard responds he is not sure what you mean by initiate. Councilman Bauer states the Council can authorize a waiver; can they authorize to initiate a waiver and the Council did say it was waived and the possible conflict on the release of the funds is do we need someone, the Mayor or Finance involved in the Personnel Services Committee to suggest a waiver be made. Corporation Counsel Howard responds no; the Council can draft a resolution and put whatever in and it is authorized by the Charter; they don't have to wait on someone to initiate the action. You can authorize an exception. Councilman Bauer suggests I would direct you to the labeled Exhibit A in the veto message and that was the request for appropriation document. The Mayor singled out and quoted what he felt was incorrect language in the document; given this is the only issue before us, can we on the floor amend the reason for request in that document to reflect more accurately the proposal that was distributed. Corporation Counsel responds no, you cannot amend a document that is an Exhibit; he doesn't think it can be amended. Councilman Bauer states the signer is here tonight and if I propose a change in the wording. Corporation Counsel Howard responds you can't do that. Councilman Bauer states he believes the Mayor's objection is the reason for the request implies it goes out to an outside group for the investigation. He would like to see this go forward and if we had taken the trouble to come here we might leave with and the maker of the document at the earliest Council meeting if it is the Council's intent and we do have the power to amend the language that we will do it. We would change the wording to say the appropriation was for an active investigation by the Council. He would like to suggest it and would support this and by overriding the veto we allow the 15 day posting on the authorization starts with this vote.

Councilman Drew states we have gone down the rabbit hole and the veto and reason for veto was superseded by the amendments to the resolution. The Charter is clear on investigation and the amendment did just that and this veto parses legal language to make it look like technical language on the resolution. You (addressing the minority party members) said you would let it move forward with the language change and when it was made, you did not vote for it. The release of funds is moot at this point and once the Mayor vetoed it that was the end of his say and the override will supersede the Mayor's authority and cannot be held back by the Finance Director. We need to keep to the matter at hand. The reasons the Mayor gave are technical and they rely solely on the original resolution and not the one passed at the meeting.

Councilman Streeto states the veto message caught me by surprise and he sat down with the Charter and I don't think it is well taken by a legal standpoint and as Mr. Howard pointed out that the Council has the authority conduct an investigation and provides no guidelines and if there were parameters, the Council would follow it and since there are none, it lets the Council appoint outside entities to conduct the investigation. There has been a precedent because the Council did appoint an outside consultant to do an investigation and it went through without objection of this nature. As a concrete example suppose in the course of this rumor and a piece of information came out that Mr. Russo sold a sewer pipe and used an inferior one and pocketed the difference, then one of the Council members would have to dig the pipe up himself because they couldn't employ an outside company to do that. I see no reason to do so here. Members from this Council signed a contract from both parties for the last one and therefore there is precedence for doing this. I think we are wasting time for this. I would add is that we extend the time to November 30 and beyond the October 31 date in the original resolution, we should amend the agenda and amend the resolution. Councilman Bauer states it is a special meeting and that can't be done; Councilman Klattenberg states it will be done at the November meeting. Councilman Streeto states he will support this.

Councilman Daley states first he addresses Councilman Bauer's concerns and he appreciates them; it is my considered opinion, the request for appropriation and the paragraph is the reason for the request and doesn't limit the Council's action. It was a catalyst for the action and the action we took is making the request and passing the resolution. He is not concerned about that. He states Councilman Bibisi knows it is clear that the Council can conduct the investigation and the veto is over reaching because there is nothing limiting how the Council

does the investigation. The Council has the ability to determine the means of conducting the investigation which includes hiring individuals to help us. The third is the Finance Director ignoring the vote of the Council and it is clear by Charter and there are numerous legal opinions that the one thing that is very clear is the Common Council is the fiscal authority of the City. Attorney Solecki, at one point put it, and affirmed his position that the Council has the control of the purse strings. Finally I would say, there are interpretations and parsing of words, but what we need to bring into the consideration and all future actions is common sense and clearly what we heard at the last Council meeting shows a need for the investigation. He heard that from the Mayor and the minority side. The Mayor was at his last resort to begin termination and employees came forward to discuss things that had or hadn't been done and the Mayor's memo responding to the WPCA letter laying out concerns and then you had a bipartisan body and legally constituted body requesting an investigation. Let's go on. He commends the subcommittee for finding the person with the right skills and you set forth a foundation for the investigation to be completed striking the right balance of a professional party and keeping the Council involved. And clearly it states it is up to the Council to make the final recommendations and conclusions. It is the Council that is investigating these matters. He urges everyone to override the veto.

Councilman Pessina states going back to Councilman Streeto's comments and the former investigation; that was my first term and he does not remember since that legal proceeding initiated by the Council that we ever got briefed by the individual who did the investigation. Secondly, was the investigation done by Freedom of Information; it is a legal proceeding of the Council and subject to that act. They have to be conducted in places and times for public scrutiny. My question is if he did hear it right, this person who will conduct the investigation will investigate and report to the subcommittee and they will brief the Council and my question is this done under Freedom of Information with times posted for public scrutiny – done 3 times or only one time because it is not clear and the Charter is very clear that is what we have to get done. Secondly, I differ with my colleagues. I do know we have the financial fiduciary responsibility, why not get a legal opinion based on what the Mayor wrote in his veto. Is it prudent to tell the Finance Director to release the funds without the added step of getting a legal opinion. I agree with Councilman Bibisi that it needs to be done and I guess the other question is why are we utilizing Professor Rae and expending \$10,000, taxpayer's money when we could use the Corporation Counsel. He should be doing it. He is the arm of the Council. Let's save the \$10,000 and let the Corporation Counsel conduct the investigation. I still have not got a question of the status of the resolution and ask Attorney Howard again; how can we in 20 days or so enact this resolution and spend \$10,000 and not sure it will meet Hoyle and does it bind the next Council, I don't think so. Corporation Counsel states there is a legitimate concern; under Robert's Rules as a body goes through terms, they don't bind future bodies is reasonably true, but sometimes continuing bodies and they can have rules that carry forward and it depends on the contents of the resolution.

Point of Order

Councilman Serra states if you are saying resolutions do not carry then I believe that persons appointed by resolution and contracts signed by resolution are no longer valid. That is absurd. Council's can modify, change, or reverse. The other night, the Chair saying the person who is the chair of this body is not bound by Robert's Rules. . . If resolutions don't carry, then there are people who are appointed by resolution, no longer have a job and then we won't have a budget.

Councilman Pessisna states he would like an opinion from the City Attorney. He asks of Councilman Drew, you had a debate and one of your concerns was the expending of money on outside legal services.

Point of Order

Councilman Serra states that is out of order at this meeting. Acting Chair Bibisi agrees and rules the comment out of order. He asks that the comments stay to the motion on the floor.

Councilwoman Kleckowski states she did watch the meeting on T.V. and is up to speed; she has a few questions and is not sure who can answer it. Does the resolution carry over and one Council bind another and that was just debated. People are using the word assist and not sure how you came about him and she doesn't see any investigatory jobs or consideration and his contract states he will conduct the interviews and consult periodically and will provide reports to the subcommittee that is a concern. It is feasible those on the subcommittee won't be here and what happens then and Councilman Daley is suggesting common sense and to avoid all this brouhaha and I am in agreement, there are serious issues to bring forward and this be on the agenda for the new Council. It is frustrating; please do not hand us documents the night of the meeting. We are reading as people are speaking and that is rude. We should be paying attention to what people are saying and has this been signed and who signs it.

Councilman Klattenberg states signatures are on the back. Councilwoman

Kleckowski asks if it has been signed. Councilman Klattenberg responds no. Councilwoman Kleckowski states it is clear in the proposal of what the person is going to do; what is the subcommittee going to do. What is their role. She is not clear on that. If someone is assisting with a Council task, clearly this person is doing all the investigating and reporting back and she has concerns with that and to Councilman Daley's point we should forego all the arguing and bring it up at the new Council.

Councilman Bauer states I am going to respond to a couple of things; first Councilman Daley I do agree and beyond agreeing with you I hope your aspirations do come true. I am reluctant to say we don't have any more obstructions. He states Councilman Streeto brought up common sense and that would bring good results. If the Common Council works together and find common ground, there will be good results. If we do this properly and I am not sure we left a good record last time we invoked this. I would like to see the paperwork and a good outline on how the Council proceeds if they have to do this in the future. Regarding Freedom of Information, all the deliberations of the subcommittee have the total approval of the Town Clerk. The Town Clerk is the FOI officer of the town and he asked if they have done everything properly so far; she has said yes. He has engaged in conversation and he had questions and asked her and she will consult with the FOI people and will forward an e-mail to the Council Clerk and when she gets it, it will be forwarded to all the Council members so you will get the information on that. As far as the willingness of the subcommittee to reach out and use all the resources in the City, we are looking at Mr. Rae to provide certain expertise and he states publicly, no one impugns the Corporation Counsel's acumen for doing the work, and it is the subcommittee's intent if they have questions and he can help to guide us, we will ask for his help to proceed properly. We are not inhibited to ask the City Attorney or anybody to help the investigation so it can be conducted properly. It is off to a good start and a lot of milestones to get there and because of the good intent, things were not written as perfectly as he wishes and he is extending an olive branch to say let's move forward with as much agreement as possible to what we have agreed must be done and let's do it with the spirit of cooperation.

Councilman Drew states he appreciates Councilman Bauer's sincerity and the thoroughness of research. On the point of FOI, he is correct and as a former reporter he is familiar with it. FOI allows for ongoing investigations, much like the ones done by the Police Department.

Councilman Daley states he was going to make the same point about exceptions and if you don't consider it a personnel matter investigation, working papers and drafts of a preliminary nature are not subject to disclosure and no one would suggest an interview would have to be done in a public forum, but what would be is the reports, anything the Council acts on would be subject and what Councilman Pessina was reading, and it was unclear, but he was reading the veto message which is the Mayor's opinion. To Councilwoman Kleckowski's concern what if someone on the subcommittee leaves, it is the same when any member leaves, the body would vote someone to replace the person. If we don't do anything until the next Council is seated, we wouldn't do anything until December. We have concerns about the director and assistant and concerns from the union and a publicly appointed authority with charges under the Charter and State statutes calling for this investigation and we have an obligation to proceed.

Councilman Serra states he views this simplistically; the reason he is supporting the inquiry is because the WPCA raised concerns, the Mayor's response raised concerns, the Union leadership raised concerns. His expectations of the subcommittee, after the individual helps them with fact finding, is to facilitate the flow of information to the Council so action can be taken. The reason is to improve the services of the Department. Again, WPCA, response by the Mayor, Union concerns, that is why we should be doing this inquiry. The expectations, for this gentleman, are to fact find and the subcommittee to disburse in my opinion. I will support this.

Councilman Pessina states I do have the same feeling as Councilman Serra that this is serious for the reasons stated and his problem is spending the \$10,000. It bothers me to spend the money to get it done and on the subcommittee and he thanks Councilwoman Kleckowski for pointing it out, nowhere in the resume do I see the gentlemen ever investigated or made an inquiry into a department into management practices and what problem is in there. The resume is impressive. He asks if this is the only one you interviewed and who did you interview. Councilman Klattenberg states the question is who do you get to do it for \$10,000 and if you look at an investigative attorney, investigative consulting firm for auditing and management, you won't get them for \$10,000. You have someone with a lot of management skills, consulting in Baltimore, New Jersey, and is familiar with conflict resolution and utilized those skills many times. Councilman Pessina states he has experience in inquiry into departments. . . Councilman Klattenberg states he described some for the committee;

Councilwoman Kasper responds he did several when he was the Chief Administrative Officer in New Haven. Councilman Pessina states that would have been helpful information. He states he will not support this on the sheer fact of expenditure of money on this Council.

Councilman Serra states frankly I am glad we had the setup the way it was; if the Council individuals and Corporation Counsel did this, this investigative inquiry would be politicized and that would not be a good thing for us. To have someone independent, outside from here collate a report, that does not politicize the investigation. That is why we spend the \$10,000. It would be explosive if the Council or Corporation Counsel did the investigation. It needs to be independent. I think the set up is right and the individuals on the subcommittee are the right ones to keep information flowing.

Councilman Bauer states the point was made subsequent terms of the Council and his opinion is the Council can actively unresolve what a previous Council did and absent that all resolutions of the Council stand. He requests a roll call vote. Councilman Klattenberg seconds that. The vote is called and it is unanimous.

The Acting Chair calls for the vote by roll call:

Councilman Bauer	Aye
Councilman Faulkner	Aye
Councilwoman Kasper	Aye
Councilman Pessina	Nay
Councilman Serra	Aye
Councilman Bibisi	Nay
Councilman Klattenberg	Aye
Councilman Daley	Aye
Councilman Santangelo	Aye
Councilman Streeto	Aye
Councilwoman Kleckowski	Nay
Councilman Drew	Aye

The Chair states the matter passes with nine in favor and three against; the matter is readopted with nine aye votes.

Resolution No.	163-11
File Name	ccreadoptappropriationforcouncil10-3-2011.docx
Description	Approving readopting the vetoed appropriation, Common Council, \$10,000, Account No. 1000-12000-55185, Contractual Services, General Fund pursuant to Chapter IV, Section 2 of the Middletown City Charter.

(Approved)

Whereas, pursuant to and in accordance with Chapter IV, Section 2 of the City of Middletown Charter, Mayor Sebastian N. Giuliano, exercised a formal veto of an appropriation for \$10,000 for the Common Council, Account No. 1000-12000-55185, Contractual Services, General Fund which was passed by the Common Council at a regular meeting called and held on October 3, 2011 at 7 p.m.; and

Whereas, the Mayor has stated his reasons for invoking a veto of this appropriation.

Now, Therefore, Be it Resolved by the Common Council of the City of Middletown: That pursuant to Chapter IV, Section 2, that the appropriation, which was formally vetoed and sent to the Common Council on October 11, 2011, be readopted and shall thereupon be effective as so readopted.

Motion to Adjourn	Councilman Drew moves to adjourn and his motion is seconded by Councilwoman Kasper. The vote is called and it is unanimous with twelve aye votes to adjourn. The Chair adjourns the meeting at 7:29 p.m.
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ATTEST:

MARIE O. NORWOOD
Common Council Clerk